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ONE HUNDRED NINTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

February 23, 2005

The Honorable Michael Chertoff  
Secretary  
U.S. Department of Homeland Security  
Washington, DC 20528

Dear Secretary Chertoff:

I am writing to request that you immediately direct your staff to cooperate with the Inspector General's inquiry into how the Department of Homeland Security rendered Mr. Maher Arar, a Canadian citizen, to Syria to be tortured for ten months before being released without charge. The investigation has continued for over a year now without resolution, mainly due to the Department staff's refusal to respond to the Inspector's inquiries. I implore you to use your new position as Secretary to bring this disgrace to an end.

In December of 2003, I requested the Inspectors General of the Justice Department and Homeland Security Department to investigate their respective roles in turning over Mr. Arar to the Syrian government. Then-Inspector General, Clark Kent Ervin, accepted this inquiry on behalf of your department and began his task. Sadly, I received word from Mr. Ervin in July of last year that Immigration and Customs Enforcement personnel were thwarting all attempts by the Inspector General to determine how Mr. Arar became the victim of an "extraordinary rendition" in violation of our international obligations and long standing human rights law. He described the process as "unduly protracted and frustrating" (letter enclosed).

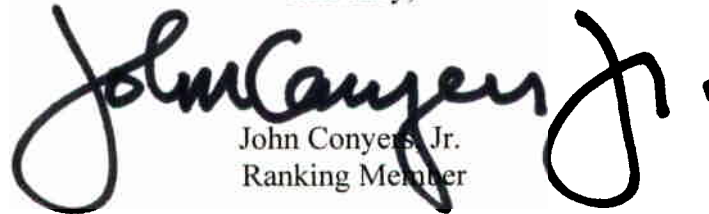
Over the past year, evidence has amassed that Mr. Arar's experience was not a unique one, but instead represents a standard operating procedure for some departments in our government. Determining exactly what happened to him is now more important than ever. Truly, until we discover just how these renditions occur, we will be unable to prevent anyone else from being tortured with the tacit approval of the United States.

I would appreciate hearing how you plan to ensure that staff will cooperate with this investigation. If you have any questions, please contact Perry Apfelbaum or Ted Kalo of my

The Honorable Michael Chertoff  
Page Two  
Febrary 23, 2005

Judiciary Committee staff at 2142 Rayburn House Office Building, Washington, DC 20515  
(phone: 202-225-6504, fax: 202-225-4423).

Sincerely,

A handwritten signature in black ink, reading "John Conyers, Jr.", with a stylized flourish at the end. The signature is written over a light gray rectangular background.

John Conyers, Jr.  
Ranking Member

Enclosure

cc: Mr. Richard L. Skinner  
Hon. F. James Sensenbrenner, Jr.



## Homeland Security

July 14, 2004

The Honorable John Conyers, Jr.  
Committee on the Judiciary  
United States House of Representatives  
Washington, DC 20515-6216

Dear Congressman Conyers:

I am writing you to provide a status report on your request that we conduct a review into the circumstances under which the Immigration and Naturalization Service removed Maher Arar, a naturalized Canadian citizen, to Syria. You wrote me on December 16, 2003, requesting that my office conduct an investigation because of your concerns about the legal and human rights implications of Mr. Arar's removal to Syria and your desire "to ensure that such a rendition never happens again."

We have strived to be diligent in our review of this matter. Indeed, I would have preferred, and thought it reasonable to have expected, that you would have had a completed report by now. However, I write to inform you that our work has been delayed and may not be completed in a timely matter. Here is a brief history and explanation of our effort.

After receiving your request, I assigned the matter to our Office of Inspections, Evaluations, and Special Reviews. On January 8, 2004, the project officially started when I sent a formal initiation letter to the Immigration and Customs Enforcement office. By mid-January, we learned that there were restrictions on parts of the material we sought to review. We were informed that some of the information that we sought was classified. With respect to other information, we were informed by department attorneys that we could not have access on grounds of privilege related to the civil litigation that Mr. Arar has brought against the federal government.

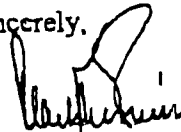
By mid-May, we were able to review the classified documents that we had sought and that initially we had been told might not be made available to us. In the main, I am satisfied that there were sound reasons for the documents to have been classified, that they were not classified as a means of shielding them from scrutiny by an office such as mine, and that some consideration of our request prior to disclosure was appropriate, although the process was unduly protracted and frustrating.

During this same period, my office sought to interview present and former government employees relating to their role in the Arar matter. Concurrently, we have discussed with government attorneys the privilege issues that have been cited to block our access to additional documents that we believe exist and to impede our requests to interview potential witnesses. In regard to these efforts, we have had no success, although we continue to press our arguments. Government counsel continue to assert the privilege or to decline to seek a waiver, which we understand could be done, and as a result have stymied this aspect of our work.

I do not believe that the assertion of a legal privilege, such as the attorney-client privilege (when in the context of advice given by government counsel to a government official regarding government work) or the attorney work product or pre-decisional privileges can be asserted to block the clear statutory access to the agency's business conferred upon Inspectors General by section 6(a)(1) of the Inspector General Act. Further, I understand that there exists a strong legal proposition that providing information to an agency Inspector General does not constitute a waiver of privileges available to an agency in litigation with a third party.

Therefore, I believe my office should have been given these materials earlier, and that they are still owed to my office. I shall continue to seek access to them. In the meantime, I write with this explanation because of the unanticipated delay in responding to your request. I am pleased to meet with you or to answer any further questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Clark Kent Eryin', with a large, stylized loop at the end.

Clark Kent Eryin  
Inspector General